

FILED

2008 MAY 29 PM 1:51

U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

BY RNH DEPUTY

Hussain D. Vahidallah Ph.D., FICPP  
7505 Gayneswood way San Diego CA 92139  
Tel & Fax (619) 479-4212

Hussain D. Vahidallah

Plaintiff,

vs.

Center for Medicare and Medicaid Service-CMS

7500 Security Blvd Baltimore MD

21244-1850

(410) 786-0727

Defendant

) Case No. 08 CV 0843 L JMA

)

) ~~Complaint for Misrepresentation~~, discrimination and  
) violation of the Americans with Disabilities Act  
) ("ADA").

)

)

)

)

)

)

)

)

)

)

)

)

proceed in forma  
pauperis pursuant to  
28 U.S.C. § 1915(a)

To the United States District Court, of Southern California, comes now, Hussain D. Vahidallah, called "plaintiff."

And Center for Medicare called Defendant.

With all my respects to the Federal Court Plaintiff Hussain D. Vahidallah alleges: In forma pauperis pursuant to 28 U.S.C. § 1915(a). See Rodriguez v. Cook, 169 F.3d 1176, 117(9th Cir.1999). Plaintiff is a low-income disabled individual I am qualified for the Zero % Deferred. Please see enclosed exhibit D & E.

I went to small claim complaint about Medicare in regard Co-payments for my medicines, small claim office said this case defendant are Federal and small claim does not have jurisdiction for Federal case go to Federal Court. I came to Federal Court. I am disabled and received disability and all disabled should not pay Co-payments, no matter is \$ 3.10 or \$ 1.5 because my income is not enough for one month that was before and SSA verbally or written announce disabled low income should not co-pay but Medicare and Medical does not pay attention to SSA. Therefore in regard to my arthritis and problem on right leg I should take these medication:

CR

1 1- 1500 mg Calcium take daily

2 2- Ginkgo Biloba 60 mg take 2 time daily

3 3- Triple Energy Ginsengs with eleuthero 300 mg two capsule take 2 time daily

4 4 – B- Complex one capsule night

5 And those it is require with out of that I can not living . But Medicare and Medical insurance does not pay for that 4  
6 item's and it is monthly \$ 100 I have to pay.

7 I am on Medicare insurance and all the time Medicare and Medical

8 pay may medicine through Medicare, even part of physical year 2006 but year 2007 Medicare refused. I did call

9 Social Security and they research and said and written you qualify for zero pay. I call Medicare many time they

10 ignored or refused me and Social Security sent to me these documents. Please see enclosed .

11 Where a plaintiff appears in pro se in a civil rights case, the court must construe the

12 Pleadings liberally and afford the plaintiff any benefit of the doubt. Karim-Panahi v. Los Angeles Police Dept.,

13 839F. 2d 621 at 623 (9<sup>th</sup> Cir. 1988). The Rule of liberal construction is "particularly important in civil

14 rights case."Ferdik V. Bonselet, 963 F. 2d 1258, 1261 (9<sup>th</sup> Cir. 1992). In giving liberal interpretation to a pro se civil

15 rights complaint, however, the court may not "supply essential elements of claims that were not initially pled." Ivey v.

16 Board of Regents of the University of Alaska, 673 F.2d 266, 268 (9<sup>th</sup> Cir. 1982).

17 To set up a prima face case under 42 U.S.C. § 1983 plaintiff alleged (1) the action complained of  
18 occurred "under color of law," and (2) the action resulted in deprivation of a constitutional right or a federal statutory  
19 right. Azer v. Connell, 306 F. 3d 930, 935 (9<sup>th</sup> Cir. 2002); McDade v. West, 223 F. 3d 1135, 1139 (9<sup>th</sup> Cir. 2000)  
20 (citing Paratt v. Williams, 474 U.S. 327, 330-31 (1986)). Such conclusory allegations fail to state a claim for violation  
21 of § 1983. Jones, 733 F. 2d at 649 .

#### 23 Claim under 42 U.S.C. § 1983

24 Section 1983 imposes liability upon any person who, acting under color of state law, deprives another of a  
25 Federally protected right. 42 U.S.C. § 1983 (1982). "To make out a cause of action under section 1983, Plaintiffs  
Must Plead that (1) the defendants acting under color of state law (2) deprived plaintiffs of rights secured by the

1 Constitution or Federal statutes.” Gibson v. United State, 781 F.2d 1334, 1338 (9<sup>th</sup> Cir. 1986).[\*\*6]

2 Therefore, Defendants violated § 1983 by depriving plaintiff of the Federal statutory rights provided by  
 3 § 1981. Defendant violated § 1983 by discriminating against plaintiff due to his disability, which deprived Plaintiff  
 4 Of his rights under the ADA. Plaintiff alleged extra adequately that Defendant took action resulting in a deprivation  
 5 of a constitutional or federal statutory right. Plaintiff assert any facts showing how the discrimination entered into  
 6 any of Defendant actions or decisions . Plaintiff alleged that Defendants breached the contract as a result of  
 7 discrimination based on my disability .Plaintiff made clearly actions and decisions were infected by discrimination

**Violation of 42 U.S.C. § 1983**

8 Plaintiff alleging in the original complaint’s § 1983 claim. To establish a prima face case under § 1983  
 9 plaintiff assert (1) the action complained of occurred “under color of law” and (2) the action resulted in a deprivation  
 10 of a constitutional right or a federal statutory right. Azer v. Connell, 306 F.3d 935 (9<sup>th</sup> Cir. 2002) (citing McDade v.  
 11 Wes, 223 F. 3d 1135, 1139(9<sup>th</sup> Cir. 2000)).

12 Plaintiff assert my Federal right which were violated are civil right act 1964 (42 U.S.C.1981). That mean is  
 13 Defendant’s violated § 1983 deprived plaintiff Federal statutory right provided by § 1981.

14 I am respectfully request penalty damage for year 2006 and 2007 which I paid \$ 1440 and no drug – Co –payments.

15 I declare under penalty of perjury that the above is true and correct.

16  
 17 Hussain D. Vahidallah Ph.D., FICPP Date November , 2005

18 

19  
 20 Dated May 29, 2008

Phone # 619-479-4212

EXH. E

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

HUSSAIN D. VAHIDALLAH,

Plaintiff,

vs.

SAN DIEGO HOUSING COMMISSION, et  
al.,

Defendants.

CASE NO. 07 CV 0371 JM (CAB)

**ORDER GRANTING MOTION TO  
DISMISS WITHOUT PREJUDICE  
AND GRANTING LEAVE TO  
AMEND**

Defendants San Diego Housing Commission and Juan Galvan move to dismiss the second amended complaint ("SAC") pursuant to Federal Rule of Civil Procedure ("FRCP") 12(b)(6). Plaintiff filed an untimely opposition to the motion on February 19, 2008. The court finds this motion appropriate for submission without oral argument. See Civ. L.R. 7.1(d)(1). For the reasons set forth below, the court **GRANTS** the motion to dismiss without prejudice for failure to state a claim, and **GRANTS** leave to amend.

**I. BACKGROUND**

Plaintiff is a low-income disabled individual who qualified for the Zero Percent Deferred Payment Loan Program offered by defendant San Diego Housing Commission ("SDHC"). (Mot. to Dismiss at 1-2.) He receives Social Security disability payments and is allegedly disabled within the meaning of the Americans with Disabilities Act. (SAC at 13.) Defendants note that Plaintiff is a state-designated vexatious litigant. (Mot. to Dismiss at 2.)

FILED

03 OCT 29 PM 3:28

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

EXH. D

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

HUSSAIN VAHIDALLAH,  
Plaintiff,

v.

PROFESSIONAL EXAMINATION  
SERVICE,  
Defendant.

Civil No. 03cv1800 J (AJB)

ORDER:

(1) GRANTING MOTION TO  
PROCEED *IN FORMA PAUPERIS*;

(2) DENYING REQUEST FOR  
APPOINTMENT OF COUNSEL; and

(2) DISMISSING COMPLAINT  
WITHOUT PREJUDICE UNDER 28  
U.S.C. § 1915(e)(2)(B).

Hussain Vahidallah ("Plaintiff"), a nonprisoner proceeding without counsel, has submitted a complaint pursuant to 42 U.S.C. § 1981. Plaintiff has not paid the \$150 civil filing fee required to commence this action, but rather, has filed (1) a motion to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a), and (2) a request for appointment of counsel under 42 U.S.C. § 2000e-5(f)(1).

A. Motion to Proceed *In Forma Pauperis*

A court may authorize the commencement of a suit without prepayment of fees if the plaintiff submits an affidavit, including a statement of all his assets, showing that he is unable to pay filing fees. 28 U.S.C. § 1915(a). Plaintiff has submitted an affidavit which sufficiently

ENTERED ON 10-31-07 03cv1800 J (AJB)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

HUSSAIN D. VAHIDALLAH)

Plaintiff )

Center for Medicare <sup>vs.</sup> Medicaid Services  
7500 Security Blvd Baltimore MD  
21214-1850

Defendant )

NO. 08CV0843 L JMA

DECLARATION OF SERVICE

Person served:

Date served: May 29, 2008

I, The undersigned declare under penalty of perjury that I am over the age of eighteen years and not a party to this action; that I served the above named person the following documents:

In the following manner: (check one below)

- 1) ☐ By personally delivering copies to the person served.
- 2) ☐ By leaving, during usual office hours, copies in the office of the person served with the who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left.
- 3) ☐ By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of his/her office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left.
- 4) ☒ By placing a copy in a separate envelope, with postage fully prepaid, for each address named below and depositing each in the U.S. Mails at San Diego, Ca on \_\_\_\_\_

Executed on 5/29/2008, 200\_ at San Diego, California

*National City*

*Manuel M. Lila*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

HUSSAIN D. VAHIDALLAH,

Plaintiff,

vs.

CENTER FOR MEDICARE AND  
MEDICAID SERVICE - CMS,

Defendant.

CASE NO. 08cv843-L (JMA)

**ORDER DENYING PLAINTIFF'S  
MOTION TO PROCEED *IN FORMA*  
*PAUPERIS***


Plaintiff Hussain D. Vahidallah filed a complaint claiming that Defendant denied him Medicare benefits in violation of the Americans with Disabilities Act. Concurrently he filed a Motion and Declaration Under Penalty of Perjury in Support of Motion to Proceed *in Forma Pauperis* ("IFP Motion"). For the reasons which follow, Plaintiff's IFP Motion is **DENIED**.

All parties instituting any civil action, suit or proceeding in a United States District Court must pay a filing fee. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay the entire fee only if the plaintiff is granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). Plaintiff's declaration is incomplete. For example, Plaintiff has not provided all the information requested in items no. 2, 4, 6, 7 and 9.

1 Plaintiff's IFP Motion is therefore **DENIED**, and the complaint is **DISMISSED**  
2 without prejudice. Pursuant to this order, Plaintiff is granted 60 days' leave to pay the  
3 filing fee required to maintain this action pursuant to 28 U.S.C. § 1914, or to submit the  
4 required information regarding his financial status. **IF PLAINTIFF CHOOSES TO**  
5 **FILE ADDITIONAL INFORMATION REGARDING HIS POVERTY, HE MUST**  
6 **ATTACH A COPY OF THIS ORDER.**

7 **IT IS SO ORDERED.**

8  
9 DATED: May 12, 2008

10   
11 M. James Lorenz  
United States District Court Judge

12 COPY TO:

13 HON. JAN M. ADLER  
14 UNITED STATES MAGISTRATE JUDGE

15 ALL PARTIES/COUNSEL  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28